

SB3730



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3730

Introduced 2/14/2020, by Sen. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

210 ILCS 45/3-202.05
305 ILCS 5/5-5.41 new

Amends the Nursing Home Care Act. Provides that the definition of "skilled care" includes some specified actions, but does not include others. Defines terms for purposes of imposing specified monetary penalties. Provides that for the purposes of imposing specified monetary penalties, the Department of Public Health must not count each individual day as an occurrence and any unforeseen circumstance that occurs for a continuous period only counts as one time. Amends the Illinois Public Aid Code. Provides that, if all other requirements for coverage under a Medicaid skilled nursing facility benefit are met, skilled nursing services shall be covered under specified circumstances.

LRB101 19922 CPF 69445 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Nursing Home Care Act is amended by changing
5 Section 3-202.05 as follows:

6 (210 ILCS 45/3-202.05)

7 Sec. 3-202.05. Staffing ratios effective July 1, 2010 and
8 thereafter.

9 (a) For the purpose of computing staff to resident ratios,
10 direct care staff shall include:

- 11 (1) registered nurses;
- 12 (2) licensed practical nurses;
- 13 (3) certified nurse assistants;
- 14 (4) psychiatric services rehabilitation aides;
- 15 (5) rehabilitation and therapy aides;
- 16 (6) psychiatric services rehabilitation coordinators;
- 17 (7) assistant directors of nursing;
- 18 (8) 50% of the Director of Nurses' time; and
- 19 (9) 30% of the Social Services Directors' time.

20 The Department shall, by rule, allow certain facilities
21 subject to 77 Ill. Admin. Code 300.4000 and following (Subpart
22 S) to utilize specialized clinical staff, as defined in rules,
23 to count towards the staffing ratios.

1 Within 120 days of the effective date of this amendatory
2 Act of the 97th General Assembly, the Department shall
3 promulgate rules specific to the staffing requirements for
4 facilities federally defined as Institutions for Mental
5 Disease. These rules shall recognize the unique nature of
6 individuals with chronic mental health conditions, shall
7 include minimum requirements for specialized clinical staff,
8 including clinical social workers, psychiatrists,
9 psychologists, and direct care staff set forth in paragraphs
10 (4) through (6) and any other specialized staff which may be
11 utilized and deemed necessary to count toward staffing ratios.

12 Within 120 days of the effective date of this amendatory
13 Act of the 97th General Assembly, the Department shall
14 promulgate rules specific to the staffing requirements for
15 facilities licensed under the Specialized Mental Health
16 Rehabilitation Act of 2013. These rules shall recognize the
17 unique nature of individuals with chronic mental health
18 conditions, shall include minimum requirements for specialized
19 clinical staff, including clinical social workers,
20 psychiatrists, psychologists, and direct care staff set forth
21 in paragraphs (4) through (6) and any other specialized staff
22 which may be utilized and deemed necessary to count toward
23 staffing ratios.

24 (b) (Blank).

25 (b-5) For purposes of the minimum staffing ratios in this
26 Section, all residents shall be classified as requiring either

1 skilled care or intermediate care.

2 As used in this subsection:

3 "Intermediate care" means basic nursing care and other
4 restorative services under periodic medical direction.
5 "Intermediate care" includes care received by a resident that
6 is not skilled care.

7 "Skilled care" means skilled nursing care, continuous
8 skilled nursing observations, restorative nursing, and other
9 services under professional direction with frequent medical
10 supervision. "Skilled care" includes nursing services so
11 inherently complex that they can be safely and effectively
12 performed only by, or under the supervision of, a registered
13 nurse or, when provided by rule or regulation, a licensed
14 practical or vocational nurse. A service is not skilled care
15 merely because it is performed by or under the direct
16 supervision of a nurse. If a service can be safely and
17 effectively performed or self-administered by an unskilled
18 person, the service shall not be regarded as skilled care even
19 if a nurse actually provides the service. The unavailability of
20 a competent person to provide a nonskilled service, regardless
21 of the importance of the service to the patient, does not
22 constitute skilled care when a nurse provides the service.

23 (c) Facilities shall notify the Department within 60 days
24 after the effective date of this amendatory Act of the 96th
25 General Assembly, in a form and manner prescribed by the
26 Department, of the staffing ratios in effect on the effective

1 date of this amendatory Act of the 96th General Assembly for
2 both intermediate and skilled care and the number of residents
3 receiving each level of care.

4 (d) (1) (Blank).

5 (2) (Blank).

6 (3) (Blank).

7 (4) (Blank).

8 (5) Effective January 1, 2014, the minimum staffing ratios
9 shall be increased to 3.8 hours of nursing and personal care
10 each day for a resident needing skilled care and 2.5 hours of
11 nursing and personal care each day for a resident needing
12 intermediate care.

13 (e) Ninety days after the effective date of this amendatory
14 Act of the 97th General Assembly, a minimum of 25% of nursing
15 and personal care time shall be provided by licensed nurses,
16 with at least 10% of nursing and personal care time provided by
17 registered nurses. These minimum requirements shall remain in
18 effect until an acuity based registered nurse requirement is
19 promulgated by rule concurrent with the adoption of the
20 Resource Utilization Group classification-based payment
21 methodology, as provided in Section 5-5.2 of the Illinois
22 Public Aid Code. Registered nurses and licensed practical
23 nurses employed by a facility in excess of these requirements
24 may be used to satisfy the remaining 75% of the nursing and
25 personal care time requirements. Notwithstanding this
26 subsection, no staffing requirement in statute in effect on the

1 effective date of this amendatory Act of the 97th General
2 Assembly shall be reduced on account of this subsection.

3 (f) The Department shall submit proposed rules for adoption
4 by January 1, 2020 establishing a system for determining
5 compliance with minimum staffing set forth in this Section and
6 the requirements of 77 Ill. Adm. Code 300.1230 adjusted for any
7 waivers granted under Section 3-303.1. Compliance shall be
8 determined quarterly by comparing the number of hours provided
9 per resident per day using the Centers for Medicare and
10 Medicaid Services' payroll-based journal and the facility's
11 daily census, broken down by intermediate and skilled care as
12 self-reported by the facility to the Department on a quarterly
13 basis. The Department shall use the quarterly payroll-based
14 journal and the self-reported census to calculate the number of
15 hours provided per resident per day and compare this ratio to
16 the minimum staffing standards required under this Section, as
17 impacted by any waivers granted under Section 3-303.1.
18 Discrepancies between job titles contained in this Section and
19 the payroll-based journal shall be addressed by rule.

20 (g) The Department shall submit proposed rules for adoption
21 by January 1, 2020 establishing monetary penalties for
22 facilities not in compliance with minimum staffing standards
23 under this Section. No monetary penalty may be issued for
24 noncompliance during the implementation period, which shall be
25 July 1, 2020 through September 30, 2020. If a facility is found
26 to be noncompliant during the implementation period, the

1 Department shall provide a written notice identifying the
2 staffing deficiencies and require the facility to provide a
3 sufficiently detailed correction plan to meet the statutory
4 minimum staffing levels. Monetary penalties shall be imposed
5 beginning no later than January 1, 2021 and quarterly
6 thereafter and shall be based on the latest quarter for which
7 the Department has data. Monetary penalties shall be
8 established based on a formula that calculates on a daily basis
9 the cost of wages and benefits for the missing staffing hours.
10 All notices of noncompliance shall include the computations
11 used to determine noncompliance and establishing the variance
12 between minimum staffing ratios and the Department's
13 computations. The penalty for the first offense shall be 125%
14 of the cost of wages and benefits for the missing staffing
15 hours. The penalty shall increase to 150% of the cost of wages
16 and benefits for the missing staffing hours for the second
17 offense and 200% the cost of wages and benefits for the missing
18 staffing hours for the third and all subsequent offenses. The
19 penalty shall be imposed regardless of whether the facility has
20 committed other violations of this Act during the same period
21 that the staffing offense occurred. The penalty may not be
22 waived, but the Department shall have the discretion to
23 determine the gravity of the violation in situations where
24 there is no more than a 10% deviation from the staffing
25 requirements and make appropriate adjustments to the penalty.
26 The Department is granted discretion to waive the penalty when

1 unforeseen circumstances have occurred that resulted in
2 call-offs of scheduled staff. This provision shall be applied
3 no more than 6 times per quarter. The Department must not count
4 each individual day as an occurrence and any unforeseen
5 circumstance that occurs for a continuous period only counts as
6 one time. Nothing in this Section diminishes a facility's right
7 to appeal.

8 For purposes of imposing the monetary penalties
9 established under this subsection, the following definitions
10 apply:

11 "Benefits" means the average cost of legally required
12 benefits per hour worked that is reported by the Bureau of
13 Labor Statistics of the United States Department of Labor
14 through the quarterly updated Employer Costs for Employee
15 Compensation for the Regions report. The Department must
16 use the legally required benefits for the report's Midwest
17 region.

18 "Legally required benefits" includes Social Security,
19 Medicare, federal and State unemployment insurance, and
20 workers' compensation.

21 "Wages" means the most current median hourly wage data
22 reported by the Bureau of Labor Statistics of the United
23 States Department of Labor in the Occupational Employment
24 Statistics' Metropolitan and Nonmetropolitan Area
25 Occupational Employment and Wage Estimates for the State of
26 Illinois. The Department must use Bureau of Labor

1 Statistics of the United States Department of Labor's
2 occupational code 29-1141 for registered nurses,
3 occupational code 29-2061 for licensed practical and
4 licensed vocational nurses, and occupational code 31-1014
5 for certified nurse assistants and all other direct care
6 staff job categories listed under subsection (a).

7 (Source: P.A. 101-10, eff. 6-5-19.)

8 Section 10. The Illinois Public Aid Code is amended by
9 adding Section 5-5.41 as follows:

10 (305 ILCS 5/5-5.41 new)

11 Sec. 5-5.41. Skilled care.

12 (a) In this Section, "skilled care" has the same meaning as
13 defined in Section 3-202.5 of the Nursing Home Care Act.

14 (b) If all other requirements for coverage under a Medicaid
15 skilled nursing facility benefit are met, skilled nursing
16 services shall be covered when an individualized assessment of
17 a patient's clinical condition demonstrates that the
18 specialized judgment, knowledge, and skills of a registered
19 nurse or, when provided by rule or regulation, a licensed
20 practical or vocational nurse are necessary. Skilled care shall
21 be covered if (1) such skilled care is necessary to maintain
22 the patient's current condition or prevent or slow further
23 deterioration so long as the beneficiary requires skilled care
24 for the services to be safely and effectively provided and (2)

1 all other requirements for coverage under the Medicare skilled
2 nursing facility benefit are met. Coverage shall not turn on
3 the presence or absence of an individual's potential for
4 improvement from nursing care, but rather on the beneficiary's
5 need for skilled care.

6 (c) A condition that would not ordinarily require skilled
7 care may nevertheless require skilled care under certain
8 circumstances. In such instances, skilled care is necessary
9 only when: (1) the particular patient's special medical
10 complications require the skills of a registered nurse or, when
11 provided by regulation, a licensed practical nurse to perform a
12 type of service that would otherwise be considered nonskilled;
13 or (2) the needed services are of such complexity that the
14 skills of a registered nurse or, when provided by rule or
15 regulation, a licensed practical nurse are required to furnish
16 the services.